

### **REMARKS**

The Office Action of June 4, 2003 has been reviewed and the comments therein were carefully considered. Claims 1-10 and 21-34 stand rejected under 35 U.S.C. § 112, second paragraph; and Claims 1-14, 16, 19-20, 35-38, and 43-44 stand rejected under 35 U.S.C. § 102(b).

By this response, Applicant has canceled claims 1, 6, 11-14, 16, 18, and 35-38. In addition, Applicant has amended claims 2-5, 7-10, 15, 17, 19-21, 28, and 39-44, and added new claims 45-54.

No new matter has been introduced into the application. Allowance of the instant application is respectfully requested.

#### **Allowable Subject Matter**

The Applicant would like to thank the Examiner for indicating allowable subject matter in claims 15, 17-18, 21-34, and 39-42.

In particular, the Office Action states that claims 15, 17-18 and 39-42 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claims 15, 17, and 39-42 to place each claim into independent form along with all of the limitations of the base claim and any intervening claim upon which they depended. Therefore, Applicant respectfully requests withdrawal of the objections to claims 15, 17, and 39-42.

In addition, the Office Action states that claims 21-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph. In response, Applicant has amended claims 21 and 28 to overcome the rejections under 35 U.S.C. § 112 as indicated in a subsequent section of this response. Therefore, Applicant respectfully requests withdrawal of the objections to claims 21-34.

### **Rejections under 35 USC § 112**

Claims 1-10 and 21-34 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1 and 6 have been canceled in the current response and claims 21 and 28 have been amended. In both claims 21 and 28 “the diffusion section” has been amended to “the diffusion area.” Applicant submits that proper antecedent support for the “the diffusion area” can be found in claim 21 and in claim 28. Therefore, Applicant respectfully requests withdrawal of the rejection in view of the amendment.

### **Rejections under 35 USC § 102**

Claims 1-14, 16, 19-20, 35-38 and 43-44 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Ward (US 5,713,923 and 5,978,702, hereinafter the “Ward patents”). Of the rejected claims, claims 2-5, 7-10, 19-20, and 43-44 have been amended. In addition, claims 1, 6, 11-14, 16, and 35-38 have been canceled. Of the rejected claims only amended claims 2 and 7 are independent claims.

With regard to independent claim 2, the Ward patents fail to disclose at least the claimed feature of “selecting a catheter having a tubular section and a solid catheter tip, the tubular section having a proximal end and a distal end, the distal end attached to the solid catheter tip . . . .” (Emphasis added). Neither of the Ward patents disclose the claimed solid catheter tip feature of the present invention. In contrast to the claimed invention, the Ward patents disclose a hollow tube 22A having an open distal end 25 that contains microporous portions 27-29 and stimulation electrodes 38 and 40. The claimed solid catheter tip of the present invention prevents therapeutics from exiting the lumen of the catheter. In addition, the claimed solid catheter tip has a curved outer edge for easier

insertion at the selected sites of therapeutic delivery. Therefore, for at least this reason, it is respectfully submitted that independent claim 2 is in condition for allowance.

In addition to the above, independent claim 2 is allowable over both Ward patents for at least another reason. Independent claim 2 also includes the claimed feature of “each of the microporous membrane sections including a first end and a second end, the first end and the second end coupled to the solid sections . . .” (Emphasis added). Neither of the Ward patents disclose this claimed feature of the present invention. The Ward patent specification in discussing the microporous portions only provides that:

End 25 is provided with microporous portions 27-29 in the preferred embodiment (FIG. 6); however, multiple holes or slits within portions 27-29 could also be used. Additional details about portions 27-29 may be obtained from pending U.S. application Ser. No. 08/430,960 entitled “Intraparenchymal Infusion Catheter System,” filed Apr. 28, 1995, in the name of Dennis Elsberry et al. and assigned to the same assignee as the present application.  
(’702 Patent at Column 4, lines 24-33; ’923 Patent at Column 4, lines 18-26).

In addition, Figure 6 of the Ward patents does not disclose the claimed feature of “each of the microporous membrane sections including a first end and a second end, the first end and the second end coupled to the solid sections . . .” (Emphasis added). As shown in Figure 6 of the Ward patents, both ends of microporous portion 29 are not “coupled to the solid sections.” Therefore, for at least this additional reason, it is respectfully submitted that independent claim 2 is patentably distinct over both Ward patents.

Claim 7 includes the claimed features of “the at least two catheters each comprising a tubular section and a solid catheter tip, the tubular section having a solid section and a microporous membrane section,” and “the microporous membrane section including a first end and a second end, the first end and the second end coupled to the solid section forming a continuous cross section of the tubular section.” (Emphasis added). Claim 7 is patentably distinct over the Ward patents for at

least the same reasons as independent claim 2. Therefore, Applicant respectfully submits that claim 7 is in condition for allowance.

Dependent claims 3-5, and 8-10, which depend from claim 2 and claim 7, are allowable for at least the same reason as claims 2 and 7. Dependent claims 19-20 have been amended to depend from claim 17 and are allowable for at least the same reason as claim 17. In addition, dependent claims 43-44 have been amended to depend from claim 39 and are allowable for at least the same reason as claim 39.

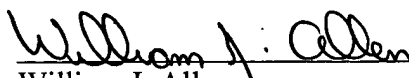
### **New Claims**

Claims 45-54 have been added in the current Amendment. No new matter has been introduced by these new claims. Applicant respectfully submits that new claims 45-54 are in condition for allowance.

In view of the above, Applicant respectfully submits that claims 2-5, 7-10, 15, 17, 19-34, 39-54 now pending in the application contain patentably distinct subject matter over all of the references of record and are in condition for allowance. Allowance of the claims is respectfully requested. Should the Examiner believe that a conversation with Applicant's representative would be useful in the prosecution of this case, the Examiner is invited and encouraged to call Applicant's representative.

Respectfully submitted,

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